

MCI

**MCI Telecommunications
Corporation**

1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 887 2551
FAX 202 887 2676

Mary L. Brown
Senior Policy Counsel
Federal Law and Public Policy

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EX PARTE OR LATE FILED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 19, 1999

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th St. SW
TWA-325
Washington, D.C. 20554

Re: **EX PARTE** in CC Docket No. 94-129

Dear Ms. Salas:

The attached letter was filed with the staff of the Common Carrier Bureau yesterday. An original and a copy are being provided today for the Office of the Secretary.

Sincerely yours,

Mary L. Brown
Mary L. Brown

Attachment

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**MCI Telecommunications
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MCI

1801 Pennsylvania Avenue, NW
Washington, DC 20006

March 18, 1999

Dorothy Attwood
Chief, Enforcement Division
Common Carrier Bureau
2025 M Street NW
Room 6008
Washington, D.C. 20554

Re: **Ex Parte** in CC Docket No. 94-129

Dear Ms. Attwood:

In the Second Report and Order in the above-captioned docket, the Commission invited carriers to propose a third party liability administrator to administer customer credits and carrier-to-carrier liability prescribed by the Commission's rules. MCI WorldCom has met with carriers and carrier representatives in the long distance industry representing virtually the entire spectrum of interexchange carriers. These carriers agree that the liability rules adopted in the Second Report and Order are cumbersome and impractical. As a result, we have worked together since the release of the order to develop a third party liability administrator solution that could replace the Commission's liability rules. We have met or are scheduled to meet with other interested parties, such as consumers and business users, incumbent local exchange carriers, competitive local exchange carriers, Attorneys General, state commission staff and interested vendors.

Attached is an outline of a proposal that we are currently circulating throughout the industry for comment and reaction. MCI WorldCom stresses that the proposal continues to evolve as we socialize the proposal to interested parties. We believe, however, that the basic architecture of the plan is sufficiently stable to provide this information on the public record at this time. Of course, as we continue our discussions with interested parties, certain aspects of our plan might change. Our intent is to file this proposal as a Petition for Waiver of the rules, as the Commission invited us to do in its order.

Also attached is a flow chart that summarizes in graphic form the functions of the Third Party Administrator (TPA) that we are proposing.

If you have any questions, please do not hesitate to ask me.

Sincerely,



Bradley C. Stillman

CC: Anita Cheng
Glenn Reynolds
Kim Parker

3/18/99

THIRD PARTY LIABILITY ADMINISTRATOR OUTLINE

Objective: to develop a process that establishes a third party entity to implement the goals and objectives of the FCC's Slamming Order.

I. Third Party Administrator ("TPA")

- One source for consumers to contact to raise and resolve slamming complaints.
- One entity to facilitate credits owed to consumers and to direct the exchange of compensation between and among carriers.
- An independent third party entity, similar to the structure of the independent LNP administrator. No carrier can have an ownership interest in the TPA.
- Authorized by the FCC and established through an RFP process administered by an industry governing board.
- Consumer access through toll free number, interactive website, and mail address.
- Entity receives complaints from consumers, as well as consumer complaints originally received by carriers, or federal or state regulatory agencies. Hot transfer mechanisms could eventually be established between carriers, regulatory complaint agencies and the TPA, although hot transfer capability might not be possible for all participating carriers.
- Notice to customers regarding the availability of the TPA provided by FCC press release, FCC website notice and communications to all appropriate state regulatory and AG organizations. Nonparticipating carriers could choose to provide customers who raise slamming complaints with specified notices regarding the TPA process.
- Carriers "opt in" to TPA process via FCC-specified procedures. Industry trade associations can "opt in" on behalf of their entire memberships, so that individual carriers need not individually file. The "opt in" process would be flexible, and open-ended, permitting carriers to "opt in" during both the initial phase of TPA implementation and at any point in the future.

II. TPA Basic Functions:

- Complaint intake through a call center
- Initiate process to transfer customer to preferred carrier

- Determine whether an unauthorized conversion exists using a nonbinding dispute resolution mechanism
- Facilitate customer credits and/or reimbursement, as well as carrier-to-carrier compensation
- Track and monitor TPA functions, and produce reports to participating carriers and regulators

III. Customer change process

- Any consumer who claims he has been slammed has the right to be switched back to his preferred carrier without additional cost. Upon receipt of a slamming complaint, regardless of verification status, the TPA would immediately contact the executing LEC and authorize it to return the consumer to his original carrier. Consumers would pay no charge for this switch. For this limited purpose, LECs would waive the appropriate change charges to the customer and preferred carrier.

IV. Nonbinding dispute resolution

- TPA determines whether a slam has occurred by taking the consumer allegation and determining whether or not the accused carrier has an FCC-authorized verification.
- TPA receives the consumer complaint, immediately contacts the accused carrier, and the accused carrier has twenty (20) business days to produce FCC-authorized verification evidence (ie, can produce a valid LOA, a TPV tape, or evidence of electronic verification or business record of verification) to the TPA. Extensions of this 20 day period would be available under appropriate and narrow circumstances.
- Submitted evidence would be evaluated by the TPA, which would determine whether the submitted verification evidence meets FCC requirements. If the TPA determines that the submitted authorization meets FCC requirements, a presumption is raised that no slam occurred. TPA would also contact customer to determine if customer has further evidence to offer.
- If TPA determines no slam occurred, then no credit is issued, and TPA informs the consumer of the decision and the consumer's further rights (see below). The accused carrier is then entitled to send a bill to the customer for service rendered.
- If the accused carrier does not have valid authorization, or does not respond within twenty (20) business days, the TPA shall determine a slam occurred.
- Credits and compensation for unauthorized conversions would be limited to situations where the customer did not authorize a switch. Credits and compensation under this process would not be available in cases where the customer authorized a carrier

change, but claims he or she was misled or deceived regarding the nature of the authorized carrier's service. Similarly, the TPA mechanism would not be used to address casual billing complaints, or other customer service issues.

- A “no contest” approach would be available to carriers who, for whatever reason, did not wish to contest a slamming allegation by submitting FCC-authorized verification. For example, this might be used if a carrier was unable to find its verification evidence within the allotted 20-day time frame for submission to the TPA.
- Accused carriers would be required to submit the verification evidence to the TPA. Processes (fax, electronic feed, email transmission, etc.) would be established to accomplish this submission in an efficient manner that would permit the TPA to evaluate the submitted verification evidence quickly and discuss it with the customer, as appropriate.
- If it was later determined that submitted verification evidence is falsified or otherwise invalid, and that a carrier engaged in false assertions, penalties—including termination of the carrier's ability to participate in the TPA waiver process—would apply.
- Consumers who continue to demand relief despite the presumption that no slam occurred would have administrative “appeal” rights to the FCC. TPA would be required to inform customers of these rights, and provide information that would allow a customer to proceed.
- Similarly, carriers would have the right to appeal unfavorable TPA determinations to the FCC.
- Importantly, as soon as the TPA reports a slamming complaint to an accused carrier, that carrier must suspend all billing treatment of the charges and suspend collections actions against the customer if bills have been sent but not paid by the customer. The “suspension” gets lifted only if the TPA makes a determination that valid verification evidence exists.

V. Customer Credits – proxy approach in lieu of “re-rating”

- Proxy Proposal: the industry group proposes to substantially eliminate the need for customer specific re-rating of consumer bills. The group believes such re-rating would be extraordinarily costly and difficult to implement, and may in fact be practically impossible to manage. Under any set of circumstances, specific customer re-rated credits would be subject to substantial delays due to the inevitable lag-time in gathering, processing and transmitting the necessary traffic (usage) information. As an alternative, the group proposes that a simplified proxy approach be adopted instead of customer-specific re-rating.

- Under the proxy approach, customers would be credited a single amount. When customers have paid their bill, the customer will be reimbursed at a discount of 50% from the unauthorized carrier's charges (provided the unauthorized carrier actually reimburses the preferred carrier, per the TPA's direction). For usage beginning on Day 31, the customer will be charged at a discount of 50% from the unauthorized carrier's charges. This approach is much more simplified and streamlined than the FCC's re-rating approach, and is likely to make most customers better off relative to the re-rating rules.
- If the customer hasn't paid the disputed charges, the preferred carrier will charge the customer 50% of the total bill of the unauthorized carrier, in the event the TPA decides a slam occurred.
- Credits under this process could be issued quickly by the authorized carrier, and without the need to specifically exchange carrier to carrier call detail information. All the unauthorized carrier needs to provide is the total invoice amount.
- Once the TPA determines a slam occurred, the unauthorized carrier may – in a second step or phase of the process – initiate an investigation against the executing or submitting carrier. If the executing/submitting carrier is ultimately determined to be at fault, the unauthorized carrier in that situation would be entitled to reimbursement for the charges for services provided on its network.
- Only the accused carrier and the authorized carrier could actually issue customer credits. A LEC could not issue credits to consumers on the accused or authorized carrier's behalf unless authorized to do so by the accused carrier or authorized carrier. This requires that the waiver grant specifically articulate this point, since the FCC requirement is essential to override certain inconsistent language in some billing and collection contracts.
- The TPA does not handle money, receive money from a customer, or exchange it between and among carriers. Instead, it ensures that customers are properly billed and properly credited, and directs carrier to carrier payment obligations.

VI. Carrier to Carrier Compensation

- The TPA administers and directs a series of monthly (or more frequent) carrier to carrier transactions in which monies collected from slammed customers are returned to authorized carriers.
- Accused carriers have an obligation under this process to report amounts billed and collected to slammed subscribers to the TPA. Authorized carriers are under a similar obligation to report amounts collected from accused carriers, amounts returned and billed to consumers, and credits issued to consumers, to the TPA.

- The TPA would have a monitoring obligation to ensure that accused carriers had reported the amount of collected funds and had remitted them to the authorized carrier, and that the authorized carrier had satisfied the obligation to rerate and issue appropriate credits.
- The TPA would mediate disputes between carriers regarding monthly carrier to carrier compensation obligations. The parties would further agree to some form of binding carrier to carrier arbitration to resolve disputes that cannot be mediated.
- TPA would have some form of audit capability, permitting it access to carrier billing and collection records to permit resolution of disputes and ensure compliance.
- In the event that either the authorized carrier or the unauthorized carrier in a slamming complaint is not a participant in the TPA process, FCC regulations would require non-participating carriers to follow TPA procedures to the extent necessary to facilitate customer credits and permit efficient carrier to carrier compensation.

VII. Establishment and Funding of Administrator

- TPA selected via an RFP process conducted by a industry governing board. Four industry associations would select voting Board representatives – USTA, ALTS, Comptel/ACTA, and TRA. In addition six at-large seats are reserved for carriers that derive their primary revenues from long distance services, and five seats for carriers that derive their primary revenues from exchange and exchange access services.
- A non-voting advisory committee would be composed of one representative each from NASUCA, NARUC, NAAG, and FCC. Advisory Committee members would attend board meetings and participate in discussions, but would not vote.
- TPA initial and ongoing costs would be industry funded, perhaps by having each carrier (including both IXC's and LEC's) contribute in some reasonable proportion toward the projected annual operations cost. In addition, consideration could be given to requiring unauthorized carriers to make a payment of some defined amount per unauthorized conversion. One possible approach would be to assess an administrative fee to the unauthorized carrier for each unauthorized conversion, with amounts collected under this provision rolling over into the TPA funding for the following year to reduce the overall assessment to carriers.
- TPA would be subject to performance standards in its contract, such that if it does not meet acceptable performance benchmarks, it can be replaced.
- An industry oversight board would be established to manage the RFP process, and measure TPA performance.

